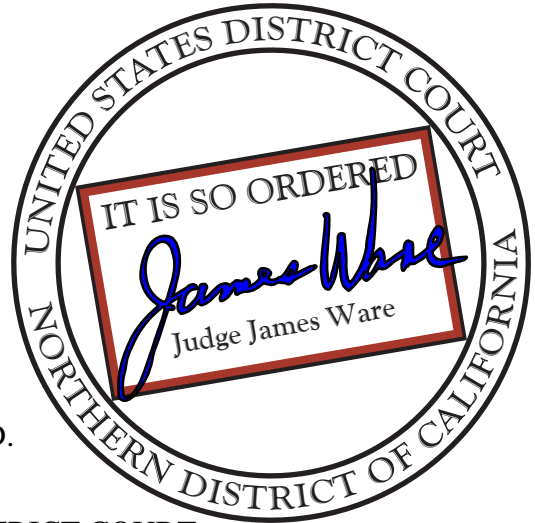


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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

12 3A ENTERTAINMENT LTD. and LABCROFT LTD.,

13 Plaintiffs,

14 v.

15 CONSTANT ENTERTAINMENT, INC. and  
16 PHILIP HO,

17 Defendants.

Case No. CV 08-1274 JW

**ORDER VACATING CASE  
MANAGEMENT CONFERENCE;  
SETTING DEADLINE FOR  
PLAINTIFF TO FILE THEIR  
MOTION FOR DEFAULT  
JUDGMENT**

18  
19 Plaintiffs 3A Entertainment Ltd. and Labcroft Ltd. hereby submit their Case Management  
20 Statement and Rule 26(f) Report.

21 1. Jurisdiction and Service: This Court has diversity jurisdiction over this action  
22 under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000  
23 and is between citizens of California and citizens of foreign states. No issues exist regarding  
24 personal jurisdiction or venue and all parties have been served.

25 2. Facts: Between 2005 and 2007, Constant Entertainment Inc. entered into several  
26 contracts with Plaintiffs for the delivery of rights to certain software games. Constant never  
27 delivered those rights, thereby breaching the contracts, and has refused to return the money paid  
28 to it by Plaintiffs.

1 During the negotiations for a number of those contracts, Constant, through its Chief  
2 Executive Officer, Philip Ho, made false representations regarding Constant's ownership of rights  
3 to certain game titles. Plaintiffs relied on those representations in contracting with Constant, and  
4 thereby suffered damages.

5 Because Defendants have defaulted, there are no factual issues in dispute.<sup>1</sup>

6 3. Legal Issues: As Defendants have defaulted, there are no disputed points of law.

7 4. Motions: Plaintiffs intend to request entry of default judgment against Defendants.

8 5. Amendment of Pleadings: Plaintiffs do not intend to amend their complaint at this  
9 time.

10 6. Evidence Preservation: Plaintiffs have preserved evidence relevant to their claims  
11 and provided this information to their counsel.

12 7. Disclosures: Because Defendants have defaulted, the parties have not exchanged  
13 initial disclosures.

14 8. Discovery: Because Defendants have defaulted, the parties have not had a  
15 Rule 26(f) meeting and thus no discovery has been taken to date. Defendant's Rule 26(f)  
16 discovery plan is as follows.

17 a. As Defendants have defaulted, no exchange of initial disclosures has been  
18 made or is necessary.

19 b. Plaintiffs do not intend to seek any additional discovery from Defendants at  
20 this time.

21 c. There are no issues relating to disclosure or discovery of electronically stored  
22 information at this time.

23 d. There are no issues relating to claims of privilege at this time.

24 e. No changes should be made to the limitations on discovery.

25 9. Class Actions: This is not a class action.

26 <sup>1</sup> Plaintiffs served their complaint on Defendants on March 12, 2008. Defendants failed to  
27 appear or otherwise respond to the complaint within the time prescribed by the Federal Rules of  
28 Civil Procedure, and the Clerk of the Court entered their default on April 22, 2008.

1           10.    Related Cases: There are no related cases or proceedings pending before another  
2 judge of this Court or before another court or administrative body.

3           11.    Relief: As against Constant, 3A seeks \$984,482 in compensatory damages for  
4 Constant's fraud and breach of contract, as well as punitive damages. This amount represents  
5 money paid to Constant pursuant to the contracts at issue in this action. As against Philip Ho, 3A  
6 seeks \$290,000 in compensatory damages for Mr. Ho's fraud, as well as punitive damages. This  
7 amount represents money paid pursuant to contracts that Constant fraudulently induced 3A into  
8 entering.

9           As against Constant, Labcroft seeks \$128,000 in compensatory damages for Constant's  
10 fraud and breach of contract, as well as punitive damages. This amount represents money paid to  
11 Constant pursuant to the contract at issue in this action. As against Mr. Ho, Labcroft seeks  
12 \$128,000 in compensatory damages for Mr. Ho's fraud, punitive damages, and costs of suit. This  
13 amount represents money paid pursuant to a contract that Constant fraudulently induced Labcroft  
14 into entering.

15           12.    Settlement and ADR: There are no prospects for settlement at this time. As  
16 Defendants have defaulted, no ADR efforts have been made.

17           13.    Consent to Magistrate Judge for All Purposes: Plaintiffs do not consent to have a  
18 magistrate judge conduct all further proceedings.

19           14.    Other References: This case is not suitable for reference to binding arbitration, a  
20 special master, or the Judicial Panel on Multidistrict Litigation.

21           15.    Narrowing of Issues: As Defendants have defaulted, no issues require narrowing  
22 and there is no need for stipulations of fact.

23           16.    Expedited Schedule: Because the only remaining issue in the case is entry of  
24 default judgment, Plaintiffs believe this case can be completed expeditiously.

25           17.    Scheduling: As Defendants have defaulted, Plaintiffs believe that scheduling dates  
26 for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference,  
27 and trial is unnecessary at this time. Plaintiffs will submit proposed dates should the Court  
28 require them.

18. Trial: Because Defendants have defaulted, trial is unnecessary.

19. Disclosure of Non-party Interested Entities or Persons: As stated in Plaintiffs' March 4, 2008 disclosure, the following listed parties may have a financial interest in the subject matter in controversy:

Akella

Digital Storm Trading, Ltd.

SWT Entertainment, Ltd.

OOO "Izdatelstvo Akella-1"

Quadriga Capital

Intel Capital

Dated: August 25, 2008

PHILIP T. BESIROF  
ALEXEI KLESTOFF  
MORRISON & FOERSTER LLP

By: /s/ Alexei Klestoff  
Alexei Klestoff

Attorneys for Plaintiffs  
3A ENTERTAINMENT LTD. and  
LABCROFT LTD.


**\*\*\* ORDER \*\*\***

In light of Defendants' apparent default and Plaintiff's desire to conduct discovery solely on the issue of damages, the Case Management Conference presently scheduled for September 8, 2008 is VACATED. However, to advance this case and in an effort to clear its Docket, the Court sets the following deadlines:

(1) Plaintiff shall complete all discovery on or before **October 27, 2008**.

(2) The last date for hearing on Plaintiff's anticipated motion for default judgment is **December 15, 2008 at 9 a.m.** Plaintiff shall obtain an entry of default from the Clerk of Court and notice the motion for default in accordance with the Civil Local Rules of the Court.

Dated: September 4, 2008

  
JAMES WARE  
United States District Judge